Supreme Court, U.S.
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No. _____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1994

FARMERS INSURANCE COMPANY, INC.,
Petitioner,
v.
JOSEPH JABBOUR,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

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QUESTIONS PRESENTED FOR REVIEW

1. Does the Supremacy Clause require that a state appellate court review a state trial court order denying confirmation of an award rendered pursuant to the Federal Arbitration Act ("FAA"), where the FAA expressly allows for immediate review of such an order?

2. Is an appraisal provision in an automobile insurance policy an agreement to arbitrate, within the meaning of the FAA, where underlying state law equates insurance appraisal with arbitration?

3. Is a state arbitration statute, which excludes insurance contracts from its reach, a law regulating the "business of insurance" within the meaning of the McCarran-Ferguson Act, so as to preclude the FAA's applicability to an appraisal clause in an insurance policy?

LIST OF PARTIES

All parties in the underlying state court action appear in the caption of this case. Farmers Insurance Company, Inc., has no subsidiaries. Farmers Insurance Company, Inc., is owned by Farmers Insurance Exchange.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

LIST OF PARTIES ii

TABLE OF AUTHORITIES v

I. OPINIONS BELOW 2

II. JURISDICTION 3

III. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED 3

IV. STATEMENT OF THE CASE 4

V. REASONS FOR GRANTING THE WRIT 12

A. The Supremacy Clause Requires The Oklahoma Supreme Court To Review The Trial Court's Order 12

1. The FAA pre-empts conflicting state substantive and procedural law 13

2. State courts should recognize the procedural rules of Section 16 of the FAA 14

3. A uniform procedural rule is needed as to the timing of appeals under the FAA 22

4. The appraisal provision is enforceable under the FAA 23

VI. CONCLUSION 31

APPENDIX (Opinion and Orders of the Oklahoma Supreme Court; Orders of the Tulsa County District Court; Constitutional provisions and statutes involved) . . . . . A

TABLE OF AUTHORITIES

PAGE

Cases:

A.G. Edwards & Sons, Inc. v. Clark,
558 So.2d 358 (Ala. 1990) 16

Ainsworth v. Allstate Ins. Co.,
634 F. Supp. 52 (W.D.Mo. 1985) 31

Atlantic Painting & Contracting, Inc. v.
Hashville Bridge Co., 670 S.W.2d 841,
846 (Ky. 1984) 15

Brown v. Western R. Co. of Alabama,
388 U.S. 294 (1949) 17

Deal v Thompson,
51 Okla. 256, 258-59, 151 P. 856 (1915) 24

Digital Equipment Corp. v. Desktop
Direct, Inc., ___U.S.___, 114 S.Ct.
1992 (1994) 16, 20

Douglas v. New York, N.H.& H.R. Co.,
279 U.S. 377 (1929) 19

Felder v. Casey,
487 U.S. 130 (1988) 17

Gordon v. U.S. Dept. of Treasury,
668 F. Supp. 483 (D.Md. 1987),
aff'd. 846 F.2d 272,
107 S.Ct. 1549 29

Group Life & Health Ins. v Royal Drug Co.,
440 U.S. 205 (1970) 29

Hamilton Life Ins. Co. of N.Y. v Republic
Nat. Life Ins. Co., 408 F.2d 606 (1969) 29

Hart v Orion Ins. Co.,
453 F.2d 1358 (10th Cir. 1971) 27

Hartford Fire Ins. Co. v Sullivan,
74 Okla. 241, 179 P. 24 (1919) 25

Hartford Lloyd's Ins. Co. v. Teachworth,
898 F.2d 1058 (5th Cir. 1990) 24

Hilton Constr. Co. v. Martin Mechanical
Contractors, Inc., 251 Ga. 701, 308
S.E.2d 830 (1983) 15

Hines v. Davidowitz,
312 U.S. 52 (1941) 14

Howlett By And Through Howlett v. Rose,
496 U.S. 356 (1990) 17, 19

Intracoastal Ventures Corp. v Safeco Ins.
Co. of American, 540 So. 2d 162
(Fla. App. 4th 1989) 25

Jack A. Anglin Co. Inc. v. Tipps,
842 S.W.2d 266 (Tex. 1992) 16

Massey v. Farmers Ins. Group,
837 P.2d 880 (Okla. 1992) 17, 25, 27, 31

McLin v. Trimble,
795 P.2d 1035 (Okla. 1990) 19, 21

Mercantile Ins. Co. v Murray,
43 P.2d 451 (Okla. 1935) 24

Miller v Nat. Fid. Life Ins. Co.,
588 F. 2d 185 (1979) 27

Moses H. Cone Hosp. v Mercury Const. Corp.,
460 U.S. 1 (1983) 13, 15

Mutual Reinsurance Bureau v. Great
Plains Mut. Ins. Co., 969 F.2d 931
(10th Cir. 1992), cert. den. 113 S.Ct. 604 30

Prima Paint Corp. v. Flood & Conklin
Mfg. Co. , 388 U.S. 395 (1962) 14

Recold, S.A. de C.V.V. Monfort of Colorado, Inc.,
893 F.2d 195 (8th Cir. 1990) 24

Southland Corp. v Keating,
465 U.S. 1 (1984) 14, 18, 22, 23

State v. District Court Of Custer Co.,
185 Okla. 597, 95 P.2d 851 (1939) 19

Tampa Motel Mgmt.Co. v. Stratton of
Florida, Inc., 186 Ga.App. 135,
366 S.E.2d 804 (1988) 15

Testa v. Katt,
330 U.S. 386 (1947) 17, 20

Trident Tech. College v. Lucas &
Stubbs, Ltd., 286 S.C. 98, 333 S.E.2d 781 (1985) 15

Triton Lines, Inc., v Steamship Mut.
Underwriting Assoc., 707 F. Supp. 277
(S.D. Tex. 1989) 29

Volt Information Sciences, Inc. v. Board Of Trustees, 489 U.S. 468 (1989) 14, 15

Wasyl, Inc. v. First Boston Corp., 813 F.2d 1579 (9th Cir. 1987) 24, 25

United States Constitution:

U.S. Const., art. VI, cl. 2 4

United States Statutes:

9 U.S.C. § 2 (1970) 1, 4, 7, 24

9 U.S.C. § 3 (1970) 1, 4

9 U.S.C. § 9 (1970) 1, 4

9 U.S.C. § 16 (West Supp. 1995) 1, 3, 8, 10, 12, 15, 16

15 U.S.C., § 1012 (1976) 4, 10, 26

28 U.S.C. § 1257(a)(1993) 3

Oklahoma Constitution:

Okla. Const. art. 7, §§ 4, 7 . . . . . 4, 18, 19

Oklahoma Statutes:

Okla. Stat. tit. 12, §§ 952, 953, 993 (1988 & West Supp. 1995) 4, 18

Okla. Stat. tit. 12, §§ 1451, 1452 (1993) 4

Okla. Stat. tit. 15, § 801 (1993) 26

Okla. Stat. tit. 15, § 802 (1993) 4, 11, 28, 30

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

Petitioner, Farmers Insurance Company, Inc., ("Farmers"), respectfully requests that a Writ of Certiorari issue to review the opinion of the Supreme Court of the State of Oklahoma entered on January 10, 1995, which dismissed an appeal filed by Farmers seeking review of the trial court's refusal to confirm an arbitration award rendered pursuant to the Federal Arbitration Act (the "FAA"), 9 U.S.C. §§ 2, 3, 9, 16.

I. OPINIONS BELOW

The order of the United States District Court for the Northern District Of Oklahoma, entered on June 5, 1991, remanding the action to the District Court Of Tulsa County, is reprinted in the appendix hereto, p. 1.

The order of the District Court of Tulsa County, Oklahoma, granting Farmers' Motion To Require Appraisal and Motion To Stay, entered on August 19, 1992, is reprinted in the appendix, p. 4.

The order of the District Court of Tulsa County, Oklahoma, denying Farmers' Motion For Order Confirming Appraisal Award, entered on August 17, 1994, is reprinted in the appendix, p. 6.

The order of the District Court of Tulsa County, Oklahoma, denying Farmers' Motion To Reconsider Order Denying Motion To Confirm Award, entered in September 28, 1994, is reprinted in the appendix, p. 8.

The Oklahoma Supreme Court's order requiring Farmers to show cause why the appeal should not be dismissed, entered on

November 30, 1994, is reprinted in the appendix, p. 10.

The Oklahoma Supreme Court's order, entered on January 10, 1995, dismissing Farmers' appeal and refusing to assume original jurisdiction, is reprinted in the appendix, p. 12.

II. JURISDICTION

On January 10, 1995, the Oklahoma Supreme Court issued an order dismissing Farmers' appeal and refusing to assume original jurisdiction. In so ruling, the Oklahoma Supreme Court rejected Farmers' argument that 9 U.S.C. § 16 (West Supp. 1995) required the Court to review the trial court's order denying confirmation of the an arbitration award.

Farmers did not file a petition for rehearing. The statutory provision conferring jurisdiction on this Court to review the opinion of the Oklahoma Supreme Court is 28 U.S.C. § 1257(a)(1993).

III. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The United States constitutional provision involved is the Supremacy Clause, art. VI, cl. 2, of the United States Constitution. The federal statutes involved are 15 U.S.C., § 1012 (1976) and 9 U S.C. §§ 2, 3, 9, 10 and 16 (1970 & West Supp. 1995). The Oklahoma constitutional and statutory provisions involved are Okla. Stat. tit. 12, §§ 952, 953, 993 (1988 & West Supp. 1995); Okla. Stat. tit. 12, §§ 1451, 1452 (1993); and Okla. Const. art. 7, §§ 4, 7 and Okla. Stat. tit. 15, § 802(A) (1993). Because the constitutional provisions and statutes are lengthy, they are set forth in the appendix, at pp. 13-29.

IV. STATEMENT OF CASE

Respondent Joseph Jabbour ("Jabbour") owned a 1984 Porsche. The Porsche was involved in a collision. Jabbour had the Porsche towed to a repair shop where unknown thieves stole the Porsche's stereo system.

Farmers issued an automobile insurance policy to Jabbour containing comprehensive and collision coverage on the Porsche. Jabbour made claims under both coverages. Jabbour and Farmers ultimately failed to settle the claim. Jabbour filed an action against

Farmers in Tulsa County District Court on September 7, 1989 alleging two causes of action.

In the first, Jabbour stated that the Porsche was damaged in a collision and that Farmers had issued an insurance policy to Jabbour which covered the Porsche. Jabbour then alleged that Farmers breached the terms of the insurance policy by failing to pay benefits under the collision coverage.

In the second cause of action, Jabbour alleged that Farmers breached the terms of the insurance policy by failing to pay benefits under the comprehensive coverage for the theft of a stereo system. Jabbour sought $10,390.79 as the reasonable value of the stolen stereo system.

In response to Jabbour's Petition, Farmers filed an Answer which, among other things, demanded appraisal under the terms of the policy. Subsequently, Jabbour filed an Amended Petition asserting a bad-faith insurer cause of action against Farmers.

Farmers removed the case to the United States District Court for the Northern District of Oklahoma. Farmers filed in federal district court a Motion To Require Appraisal and Motion

To Stay Under Federal Arbitration Act. Farmers' policy contained the following appraisal provision:

> You or we may demand appraisal of the loss. Each will appoint and pay a competent and disinterested appraiser and will equally share other appraisal expenses. The appraisers, or a judge of a court having jurisdiction, will select an umpire to decide any differences. Each appraiser will state separately the actual cash value and the amount of loss. An award in writing by any two appraisers will determine the amount payable, which shall be binding subject to the terms of the insurance.

On March 27, 1991, Jabbour filed a Motion For Remand, which also contained arguments opposing Farmers' appraisal request.

On June 12, 1991, the federal court remanded the action to Tulsa County District Court. In the Order remanding the action, the federal court specifically declared that it had "not considered" Farmers' Motion to Require Appraisal. (Order, p.1, appendix).

In state court, Farmers again sought to invoke the policy appraisal provisions. Farmers filed a Motion To Compel Appraisal and Motion To Stay based on Oklahoma common law and the FAA.

In his response to Farmers' motion, Jabbour, inter alia, argued that appraisal was not available under Oklahoma common law. As to the FAA, Jabbour contended the policy appraisal provision was not an "arbitration" agreement as contemplated by 9 U.S.C. § 2. Jabbour also argued that the McCarran-Ferguson Act prevented application of the FAA to the appraisal provision. The trial court rejected Jabbour's arguments, stayed the state court action, and granted Farmers' Motion To Compel Appraisal. (Order, p.4, appendix).

Jabbour and Farmers then entered into a Memorandum For Appraisal. In the Memorandum, the parties agreed that the appraisers would determine the actual cash value of, and the amount of loss to Jabbour's Porsche. On January 10, 1994, two appraisers and an umpire awarded Jabbour $18,000. Farmers paid Jabbour the full amount of the award. Jabbour never sought to vacate or modify the award.

On July 22, 1994, Farmers filed a motion to confirm the appraisal award. Farmers sought confirmation under the FAA and Oklahoma common law. Jabbour objected to confirmation. In his

objection, Jabbour asserted similar arguments that he had previously raised in response to Farmers' Motion To Compel Appraisal. Jabbour did not allege the award was procured by corruption, fraud, undue means, or misconduct of the appraisers or umpire. Jabbour did not allege the award was inadequate. Despite its earlier order compelling appraisal, the trial court refused to confirm the award. (Order, p. 6, appendix) The trial court stated no reason for its ruling. Farmers timely filed a motion to reconsider. The trial court again refused to confirm the appraisal award. (Order, p. 8, appendix).

Farmers then timely filed a Petition In Error with the Oklahoma Supreme Court to review the trial court's refusal to confirm the appraisal award. In its Petition in Error, Farmers alleged the trial court committed error under Oklahoma common law and the FAA in arbitrarily refusing to confirm the award. As to the FAA, Farmers asserted that 9 U.S.C. § 16(a)(1)(D) provided the Oklahoma Supreme Court with authority to review the trial court's interlocutory order. (Petition in Error, p. 30, appendix).

On November 30, 1994, the Oklahoma Supreme Court ordered Farmers to show cause why the appeal should not be dismissed. Specifically, the Court ordered as follows:

> Court notes the filing of a supplemental petition in error with the orders attached. Appellant is directed to show cause why this appeal should not be dismissed for lack of an appealable order. In response, appellant should address the following: 1) why the Federal Arbitration Act should apply when the Oklahoma Arbitration Act expressly exempts insurance contracts from its provisions, 15 O.S. 1991 § 802(A); 2) whether the Federal Arbitration Act applies in this case, see Hartford Lloyd's Insurance Company v. Teachworth, 898 F.2d 1058 (5th Cir. 1990); and 3) if the Oklahoma and Federal Arbitration Acts don't apply, any other reason why the trial court's order would be appealable. Appellant's response shall be filed not later than December 14, 1994.

(Order, p. 10, appendix).

On December 14, 1994, Farmers filed its Brief To Show Cause Why Appeal Should Not Be Dismissed. In the brief, Farmers made three arguments. First, Farmers contended that the policy appraisal provision was valid and enforceable under the FAA as an "arbitration" agreement. Second, Farmers argued that the Oklahoma Arbitration Act did not prevent application of the FAA. The Oklahoma Arbitration Act, Farmers contended, did

not purport to regulate the "business of insurance" within the meaning of the McCarran-Ferguson Act, 15 U.S.C. § 1012, et.seq.

Third, Farmers argued that the 9 U.S.C. § 16(a)(1)(D) required the Oklahoma Supreme Court to review the trial court's order. Farmers conceded that, in the absence of 9 U.S.C. § 16(a)(1)(D), the trial court's order was an unappealable interlocutory order under Oklahoma appellate statutes and rules. Nevertheless, Farmers argued that its rights under the FAA would essentially be forfeited if immediate review were denied. Farmers then cited a split in state court authority as to whether the appeal rules in 9 U.S.C. § 16 were applicable in state court actions involving the FAA.

Farmers asked the Oklahoma Supreme Court to recast Farmers' Petition In Error as Petition For Writ of Mandamus and assume original jurisdiction over the matter if it determined the trial court's order was unappealable. Farmers argued that the Oklahoma Supreme Court had, on several occasions, recast petitions in error as applications to assume original jurisdiction.

Farmers cited an Oklahoma case where, by analogy, the Oklahoma Supreme Court held that mandamus was appropriate to compel a trial court to confirm a foreclosure sale. Farmers also cited a Texas Supreme Court decision where the court held that an original action was appropriate for reviewing an otherwise unappealable, anti-arbitration order under the FAA.

On January 11, 1995, the Oklahoma Supreme Court dismissed Farmers' appeal. The Court issued the following order:

> Appellee's motion to dismiss is granted and this appeal is dismissed. The trial court's order, refusing to confirm an appraisal award in a case arising out of an insurance contract, is not an interlocutory prejudgment order appealable by right. Insurance contracts are specifically excluded from the Oklahoma Arbitration Act. See 15 O.S. 1991 § 802(A). Interlocutory orders appealable by right are limited to those expressly identified by an Oklahoma statute. Reams v. Tulsa Cable Television, Inc., 604 P.2d 373 (Okla. 1979).
>
> Appellant's request that the petition in error be recast as an application to assume original jurisdiction and petition for writ of mandamus is denied.

(Order, p. 12, appendix).

Farmers seeks certiorari to review the Oklahoma Supreme

Court's refusal to provide immediate review of the trial court's order denying confirmation. As discussed below, the appraisal provision in Farmers' policy is valid and enforceable under the FAA. The FAA provides for an immediate appeal from an order refusing to confirm an award. 9 U.S.C. § 16(a)(1)(D). State courts are split as to whether an immediate right of appeal to state court lies from the interlocutory orders in 9 U.S.C. § 16(a). By denying any review of the trial court's order, the Oklahoma Supreme Court is refusing to recognize the FAA, denying Farmers' rights under the FAA, and perpetuating judicial hostility toward arbitration.

V. REASONS FOR GRANTING THE WRIT

A. THE SUPREMACY CLAUSE REQUIRES THE OKLAHOMA SUPREME COURT TO REVIEW THE TRIAL COURT'S ORDER

The Oklahoma Supreme Court should have reviewed the trial court's order denying confirmation of the appraisal award. As it now stands, Farmers must suffer an adverse final judgment as a pre-condition to state appellate court review of its FAA rights.

Without immediate review, the core purpose of the FAA--to enforce arbitration agreements--will have been frustrated. The Oklahoma Supreme Court has, without valid excuse, ignored the express appeal rules of the FAA. The Supremacy Clause prohibits Oklahoma from refusing to enforce federal rights emanating from the FAA.

1. The FAA pre-empts conflicting state substantive and procedural law.

The FAA is a "congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary." Moses H. Cone Hosp. v Mercury Const. Corp., 460 U.S. 1, 24 (1983). "Congress' clear intent, in the [Federal] Arbitration Act, [was] to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible." Id. at 22.

This Court has declared: "Contracts to arbitrate are not to be avoided by allowing one party to ignore the contract and resort to courts. Such a course could lead to prolonged litigation, one of the very risks the parties, by contracting for arbitration,

sought to eliminate." Southland Corp. v. Keating, 465 U.S. 1,7 (1984). "[T]he unmistakenly clear congressional purpose [was] that the arbitration procedure, when selected by the parties to a contract, be speedy and not subject to delay and obstruction in the courts." Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 404 (1962).

The FAA is enforceable in federal and state courts. Southland, 465 U.S. at 16. The FAA pre-empts state statutes to the contrary and makes more restrictive state statutes invalid under the Supremacy Clause. Id. at 15-16.

Although the federal policy does not require arbitration under a certain set of procedural rules, state law may be pre-empted if it conflicts with federal law and is "an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Volt Information Sciences, Inc. v. Board Of Trustees, 489 U.S. 468, 477 (1989)(quoting Hines v. Davidowitz, 312 U.S. 52, 67 (1941).

2. State courts should recognize the procedural rules of Section 16 of the FAA.

This Court has not yet decided whether the procedural rules of the FAA are applicable in state court proceedings. Volt 489 U.S. at 477 n.6. Nevertheless, several state courts have held that various procedural sections of the FAA are enforceable in state court proceedings. For instance, state courts have applied the stay provisions of section 3 in state court proceedings. Cone, 460 U.S. at 27, n. 34.

Similarly, state courts have recognized that section 9, which requires judicial confirmation of awards, applies in state court proceedings. See, Hilton Constr. Co. v. Martin Mechanical Contractors, Inc., 251 Ga. 701, 703, 308 S.E.2d 830, 832 (1983); Tampa Motel Mgmt.Co. v. Stratton of Florida, Inc., 186 Ga.App. 135, 138-39, 366 S.E.2d 804, 807 (1988); Trident Tech. College v. Lucas & Stubbs, Ltd., 286 S.C. 98, 103-04, 333 S.E.2d 781, 785 (1985), cert. denied, 474 U.S. 1060 (1986); But see, Atlantic Painting & Contracting, Inc. v. Hashville Bridge Co., 670 S.W.2d 841, 846 (Ky. 1984).

This Court has not considered whether section 16, which relates to interlocutory appeals, applies in state court proceedings.

However, state courts addressing the issue are split. See, e.g., A.G. Edwards & Sons, Inc. v. Clark, 558 So.2d 358 (Ala. 1990)(section 16 of the FAA gives a right to appeal interlocutory orders otherwise unappealable under state law); Jack A. Anglin Co. Inc. v. Tipps,, 842 S.W.2d 266 (Tex. 1992)(section 16 is not applicable in state court, however, to preserve rights under FAA, petition for writ of mandamus is proper procedure for challenging trial court's anti-arbitration ruling under FAA). As applied to our case, Section 16(a)(1)(D) of the FAA expressly allows for immediate appeal from a trial court's refusal to confirm an award.

Farmers contends that state courts must recognize section 16(a). As discussed below, without immediate review of the various anti-arbitration orders listed in section 16(a), the federal pro-arbitration policy of section 2 would be wholly frustrated.

Section 16 reflects an "express congressional judgment that particular policies require that private rights be vindicable immediately...." Digital Equipment Corp. v. Desktop Direct, Inc., ___U.S.___, 114 S.Ct. 1992, 2002, n. 7 (1994). This congressional judgment, pursuant to the Supremacy Clause, is the

prevailing policy and law in Oklahoma. Testa v. Katt, 330 U.S. 386 (1947)(the policy of a federal law is the "prevailing policy of every state."); Howlett By And Through Howlett v. Rose, 496 U.S. 356 (1990). Oklahoma courts are not free to reject this congressional policy and resulting federal law. Testa, 330 U.S. at 814; Howlett, 330 U.S. at 368-374. Indeed, the Oklahoma Supreme Court cannot use its procedural rules to deny, burden or otherwise frustrate a federal right. "A federal right cannot be defeated by forms of local practice." Brown v. Western R. Co. of Alabama, 388 U.S. 294 (1949); Felder v. Casey, 487 U.S. 130 (1988); Howlett, 496 U.S. at 372.

By refusing immediate review of an order made appealable under the FAA, the Oklahoma Supreme Court has impermissibly rejected congressional policy and refused to enforce a federal right. Indeed, denying immediate review of the trial court's order forces Farmers to suffer an adverse judgment in a traditional judicial forum as a pre-condition to state appellate court review of an anti-arbitration order under the FAA. Massey v. Farmers Ins. Group, 837 P.2d 880, 883 (Okla. 1992)(only a confirmed award has the

same preclusive effect as a judgment in a civil action). In essence, the Oklahoma Supreme Court has told Farmers that its appraisal provision will not be enforced until the state-court litigation has fully run its course. This violates the FAA. Southland, 465 U.S. at 8-9 ("For us to delay review of a state judicial decision denying enforcement of the contract to arbitrate until the state-court litigation has run its course would defeat the core purpose of a contract to arbitrate.").

Moreover, Farmers is not asking this Court to require the State of Oklahoma to create a court competent to enforce appellate rights under the FAA. Review of the trial court's refusal to confirm the award is possible under existing Oklahoma procedural rules.

Pursuant to Article 7, § 4 of the Oklahoma Constitution, the Oklahoma Supreme Court is vested with the appellate jurisdiction and original jurisdiction over all inferior courts. The trial court's order is not appealable as of right under Oklahoma statutes. Okla. Stat. tit. 12, §§ 952, 953, 993. Nevertheless, the original jurisdiction of the Oklahoma Supreme Court is broad

enough to include review of the trial court's order refusing to confirm the appraisal award. Okla. Const. art. 7, § 4; Okla. Stat. tit. 12, §§ 1451, 1452; State v. District Court Of Custer Co., 185 Okla. 597, 95 P.2d 851 (1939)(mandamus will lie to compel a trial court to confirm a foreclosure sale); McLin v. Trimble, 795 P.2d 1035 (Okla. 1990)(although appeal unavailable under Oklahoma statutes, writ of prohibition proper method for review of interlocutory order denying correctional officer's claim of qualified immunity under 42 U.S.C. § 1983).

In the present case, the Oklahoma Supreme Court refused to assume original jurisdiction and review the trial court's order without a "valid excuse." Howlett, 496 U.S. at 369 ("A state court may not deny a federal right, when the parties and controversy are properly before it, in the absence of a 'valid excuse.'")(quoting Douglas v. New York, N.H.& H.R. Co., 279 U.S. 377, 387-388 (1929)). Indeed, the Court gave absolutely no excuse at all.

Nevertheless, two possible rationales exist which might explain the Court's refusal to review the trial court's order. Neither is valid under the Supremacy Clause. Howlett, 496 U.S.

at 371 ("An excuse that is inconsistent with or violates federal law is not a valid excuse: The Supremacy Clause forbids state courts to dissociate themselves from federal law...")

First, the Oklahoma Supreme Court might have determined that undesirable piecemeal litigation would result if review of interlocutory orders under the FAA were permitted. However, this excuse fails under the Supremacy Clause. A state court cannot refuse to enforce federal law simply because it disagrees with the wisdom of congressional judgment or policy. Testa, 330 U.S. at 393. The congressional judgment or policy, as expressed in section 16 of the FAA, is that the need for immediate review of various interlocutory, anti-arbitration orders far outweighs the potential negative side-effects of piecemeal litigation. Digital, ____U.S._____, 262 S.Ct. at 2002, n.7.

Second, the Oklahoma Supreme Court, in refusing to review the trial court's order, might have been intending to perpetuate judicial hostility toward arbitration. This excuse for denying review of course violates the FAA. This hostility to arbitration, however, can be inferred by actions of the Oklahoma

Supreme Court in accepting original jurisdiction in a similar case involving federal rights where appellate review was also unavailable under Oklahoma statutes.

In McLin, the Oklahoma Supreme Court acknowledged the national federal policy of providing immediate review of interlocutory orders denying qualified immunity to officials in 42 U.S.C. § 1983 actions. The Court noted that it did not have appellate jurisdiction of the trial court's order overruling a motion for summary judgment as to qualified immunity. The Court rejected the argument that the Supremacy Clause actually empowered or gave the Court appellate jurisdiction to hear the appeal. Nevertheless, due to the important federal substantive interests at stake, the Court accepted the matter within its original jurisdictional.

No real distinction exists between McLin and our case. The only explanation for the Court's refusal of original jurisdiction in our case (and its acceptance in McLin) lies in the Court's apparent hostility toward arbitration--the very evil the FAA was designed to prevent.

3. A uniform procedural rule is needed as to the timing of appeals under the FAA.

This Court should issue a writ of certiorari to make it clear that the orders specified in section 16(a) of the FAA are immediately reviewable in state court proceedings. Such a ruling would have widespread application since the overwhelming majority of claims involving the FAA arise in state court. Southland, 465 U.S. at 13.

Moreover, the substantive provisions of the FAA are practically meaningless without the appeal rules in Section 16. To allow state courts to refuse immediate review of anti-arbitration orders frustrates the purpose and intent of the FAA and essentially nullifies the FAA as an alternate dispute mechanism. Without immediate review, parties such as Farmers are forced to fully litigate issues covered by an arbitration agreement as a pre-condition to review of anti-arbitration orders.

Finally, a uniform rule as to the timing of appeals under the FAA will help reduce unequal enforcement of arbitration agreements in state and federal court. With a uniform rule, state

court litigants, like Farmers, would be entitled to the same important review rights as federal court litigants. Without a uniform appeal rule, state court litigants, like Farmers, must first fully litigate a claim before seeking review and enforcement of their FAA rights. Similarly situated federal court litigants, however, can obtain immediate review and enforcement of their arbitration agreements before having to fully litigate the underlying claims. This type of discrimination wholly violates the congressional intent of the FAA. Southland, 464 U.S. at 15 ("We are unwilling to attribute to Congress the intent....to create a right to enforce an arbitration contract and yet make the right dependent for its enforcement on the particular forum in which it is asserted.")

4. The appraisal provision is enforceable under the FAA.

When initially presented with Farmers' appeal, the Oklahoma Supreme Court expressed concern as to whether the FAA applied to the insurance policy appraisal provision at issue in this case. The Court also questioned the effect of the Oklahoma Arbitration Act on the appraisal provision. Farmers presents the

following brief argument to show this Court that Farmers has a valid complaint as to the trial court's refusal to confirm the appraisal award.

9 U.S.C. § 2 validates "contracts..to settle by arbitration a controversy thereafter arising out of such contract." The FAA does not define "arbitration." Wasyl, Inc. v. First Boston Corp., 813 F.2d 1579, 1582 (9th Cir. 1987). Thus, in determining whether parties have entered into an agreement to arbitrate under the FAA, courts are to apply state law principles. Wasyl, 813 F.2d at 1582; Recold, S.A. de C.V.V. Monfort of Colorado, Inc., 893 F.2d 195, 197, n. 6 (8th Cir. 1990); Hartford Lloyd's Ins. Co. v. Teachworth, 898 F.2d 1058, 1062 (5th Cir. 1990).

Oklahoma courts have broadly defined "arbitration" as "the submission of some disputed matter to selected persons, and the substitution of their decision or award for the judgment of the established tribunals of justice." Deal v Thompson, 51 Okla. 256, 258-59, 151 P. 856 (1915). Oklahoma courts have equated insurance appraisal clauses with arbitration. Mercantile Ins. Co. v Murray, 171 Okla. 597, 43 P.2d 451 (1935)(court repeatedly

refers to appraisal clause in insurance agreement as an arbitration clause and simply treats the two as the same); Hartford Fire Ins. Co. v Sullivan, 74 Okla. 241, 179 P. 24 (1919)(appraisal in insurance policy referred to as "arbitration").

More recently, the Oklahoma Supreme Court has held that insurance "appraisal" differs from "arbitration" only if the appraisal clause in the policy is required by statute. Massey, 837 P.2d at 884, n. 1.

Since the appraisal clause in Jabbour's policy would refer the dispute, by voluntary agreement of the parties, to three impartial arbitrators for a final and binding decision as to the amount of the loss, there is no doubt that this would qualify as "arbitration" under the Massey case. Unlike the appraisal provision in Massey, however, the Jabbour appraisal provision was not inserted because of a statutory mandate. It was inserted simply as a normal clause in the contract. See, also, Intracoastal Ventures Corp. v Safeco Ins. Co. of American, 540 So. 2d 162 (Fla. App. 4th 1989) (appraisal clause similar to appraisal clause in Jabbour's policy held to be an "arbitration agreement"); Waysl, (Ninth

Circuit, applying California law, determined that appraisal clause in purchase contract was "arbitration agreement" within the meaning of the FAA).

In sum, the appraisal clause in Jabbour's policy is enforceable under the FAA. A determination that the appraisal clause is an "arbitration agreement" under the FAA would promote the strong federal policy in favor of arbitration. As a matter of federal law, any doubts regarding Jabbour's appraisal clause should be resolved in favor of arbitration.

Furthermore, the Oklahoma Arbitration Act, Okla. Stat. tit 15, § 801, et. seq., does not prevent application of the FAA to the appraisal provision. The Oklahoma Arbitration Act does not purport to regulate the "business of insurance" within the meaning of the McCarran-Ferguson Act, 15 U.S.C. §1012, et. seq. The McCarran-Ferguson Act makes the regulation of the "business of insurance" strictly a matter for state law. Thus, if Oklahoma has sought to prohibit insurance appraisal by statute in Oklahoma, then the McCarran-Ferguson Act would honor the Oklahoma statute and the FAA would not apply. However, Oklahoma has not sought to

prohibit insurance appraisal/arbitration by statute.

First, no provision in Oklahoma's insurance code would be impaired, invalidated or superseded by application of the FAA. A state regulatory scheme which covers "insurance" in general, without specifically prohibiting arbitration, is not sufficient to exempt an insurance arbitration agreement from operation of the FAA. Miller v Nat. Fid. Life Ins. Co., 588 F. 2d 185, 187 (1979) ("The test under McCarran-Ferguson is not whether a state has enacted statutes regulating the business of insurance, but whether such state statutes will be invalidated, impaired, or superseded by application of federal law."); Hart v Orion Ins. Co. 453 F.2d 1358 (10th Cir. 1971) (party seeking to use McCarran Act failed to show application of FAA would impair, impede, or invalidate any particular state law which regulated the business of insurance).

Moreover, in Massey v. Farmers Ins. Group, the Oklahoma Supreme Court held that an appraisal clause in a fire insurance policy was invalid under the Oklahoma constitution because the clause amounted to a legislatively required loss of the

right to jury trial. The Massey Court, however, only disapproved of insurance appraisal clauses if they were mandated by statute. Obviously then, Oklahoma does not "regulate" insurance appraisal. In fact, Oklahoma courts only approve of insurance appraisal clauses if they are inserted without statutory requirement. Under Massey, the only "good" appraisal under the Oklahoma Constitution would be an "**unregulated**" appraisal (i.e., an appraisal clause that was not mandated by statute such as exists in the present case).

Second, section 802 of the Oklahoma Arbitration Act is not an attempt by the Oklahoma legislature to regulate insurance appraisal. As discussed below, the practice of "arbitration/appraisal" is not the in the "business of insurance" within the meaning of the McCarran-Ferguson Act. Furthermore, even if arbitration is the "business of insurance," the FAA does not invalidate, impair or supersede section 802.

In order for the McCarran-Ferguson Act to apply, three elements must be present: "(1) a state statute intended to regulate or tax, (2) the "business of insurance" (3) which is invalidated,

impaired, or superseded by an Act of Congress not expressly related to the business of insurance." Gordon v. U.S. Dept. of Treasury, 668 F. Supp. 483, 487 (D.Md. 1987), aff'd. 846 F.2d 272, cert.den., 107 S.Ct. 1549. With respect to the second element, the "business of insurance" is not the same as the "business of insurance companies." Group Life & Health Ins. v Royal Drug Co., 440 U.S. 205, 211 (1970). Federal courts have determined that state arbitration acts are not laws regulating the "business of insurance" within the meaning of the McCarran-Ferguson Act. Hamilton Life Ins. Co. of N.Y. v Republic Nat. Life Ins. Co., 408 F.2d 606 (2nd Cir. 1969)(Texas Arbitration Act and New York Arbitration Act were not laws that regulated the "business of insurance"); Triton Lines, Inc., v Steamship Mut. Underwriting Assoc., 707 F. Supp. 277, 279 (S.D. Tex. 1989) ("A disputed claim is not the business of insurance. The business of regulating the insurance industry focuses on the underwriting and spreading of the policyholder's risk...The McCarran Act has never been held to have abrogated federal procedural practices in federal court cases. The anti-arbitration provision of the Texas

Insurance Code, therefore, is countermanded by the Federal Arbitration Act."); Contra, Mutual Reinsurance Bureau v. Great Plains Mut. Ins. Co., 969 F.2d 931 (10th Cir. 1992), cert. den. 113 S.Ct. 604.

Nevertheless, even if Okla. Stat. tit. 15, § 802 is a law regulating the "business of insurance", the FAA does not invalidate, impair or supersede that section. Section 802 does not declare insurance arbitration invalid. Section 802 does not specifically invalidate or make illegal arbitration agreements in insurance policies. Rather than invalidating insurance arbitration agreements. section 802 simply excludes insurance contracts from the reach and procedural guidelines of the Oklahoma Arbitration Act. Section 802(A), in relevant part, states: "This act shall not apply to....contracts with reference to insurance except for those between insurance companies." Cf. Great Plains, (FAA impaired Kansas arbitration act which states that arbitration agreements in insurance contracts are invalid). In short, the legislature has not attempted to regulate insurance in the Oklahoma Arbitration Act. The most that can be said is that the legislature consciously chose

not to regulate insurance arbitration.

Since they are not controlled by statute, insurance appraisal agreements fall within Oklahoma common law which, according to Massey, has always allowed for appraisal provisions in insurance policies. Notably, even if insurance arbitration/ appraisal is held invalid at common law, the FAA overrules the common law and makes them valid through the Supremacy Clause. And, state common law rules purporting to make arbitration clauses generally unenforceable are not laws regulating the "business of insurance" within the meaning of the McCarran-Ferguson Act. Ainsworth v. Allstate Ins. Co., 634 F. Supp. 52 (W.D.Mo. 1985).

V. CONCLUSION

For all the reasons stated, Farmers' petition for a writ of certiorari should be granted.

Respectfully submitted,

KNOWLES, KING, TAYLOR & ELLIS

By _____

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Farmers Insurance Company, Inc.

No. _____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1994

FARMERS INSURANCE COMPANY, INC.,
Petitioner,
v.
JOSEPH JABBOUR,
Respondent.

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

PAGE

Decision of United States District Court for the Northern District of Oklahoma, June 5, 1991 1

Decision of the District Court In and For Tulsa County, State of Oklahoma, August 19, 1992 4

Decision of the District Court In and For Tulsa County State of Oklahoma, August 17, 1994 6

Decision of the District Court In and For Tulsa County, State of Oklahoma, September 28, 1994 8

Decision of the Supreme Court of the State of Oklahoma, November 30, 1994 10

Decision of the Supreme Court of the State of Oklahoma, January 10, 1995 12

U.S. Const. art. VI, cl. 2 13

15 U.S.C. § 1012 (1976) 14

9 U.S.C. § 2 (1970) 14

9 U.S.C. § 3 (1970) 15

9 U.S.C. § 9 (1970) 15

9 U.S.C. § 10 (West Supp. 1995) 17

9 U.S.C. § 16 (West Supp. 1995) 18

Okla. Stat. tit. 12, § 952 (1988) 20

Okla. Stat. tit. 12, § 953 (1988) 22

Okla. Stat. tit. 12, § 993 (West Supp. 1995) 22

Okla. Stat. tit. 12, § 1451 (1993) 25

Okla. Stat. tit. 12, § 1452 (1993) 26

Okla. Const. art. 7, § 4 26

Okla. Const. art. 7, § 7 28

Okla. Stat. tit. 15, § 802 (1993) 29

Portions of Petition in Error
Filed in The Supreme Court of
The State of Oklahoma, October 27, 1994 30

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF OKLAHOMA

JOSEPH JABBOUR,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 91-C-116-E
	)	
FARMERS INSURANCE COMPANY, INC., d/b/a FARMERS INSURANCE GROUP,	)	
	)	
Defendant.	)	

ORDER

This matter is before the Court on Defendant's Motion to Require Appraisal/Motion to Stay Under Federal Arbitration Act and Plaintiff's Motion to Remand. Because the Court finds that Plaintiff's Motion is dispositive, it need not consider Defendant's motion.

It is undisputed that Plaintiff filed suit in state court on September 7, 1989 asserting two causes for breach of the terms of the insurance policy, that on February 1, 1991 Plaintiff amended his petition to add a claim for bad faith breach of the policy arising out of six specific acts identified by Plaintiff, and that

Defendant filed its Notice of Removal in this Court on February 25, 1991. Plaintiff urges this Court to remand the case to state court because Defendant's attempted removal is out of time. The pertinent section of the federal removal provision, 28 U.S.C. §1446(b) states that "a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than one year after commencement of the action." The basis of jurisdiction asserted by Defendant in its Notice of Removal is diversity pursuant to 28 U.S.C. §1446. Therefore, Plaintiff argues, the one year cap applied and remand is appropriate.

In response, Defendant argues that this Court should apply the exception to the thirty-day rule of §1446 which has been carved out by case law. This case law exception permits removal after the expiration of the thirty-day period where Plaintiff's amended complaint "so changes the nature of his action as to constitute 'substantially a new suit begun that day.'" Wilson v. Intercollegiate (Big Ten) Conf., 668 F.2d 962, 965 (7th Cir. 1982), quoting Fletcher v. Hamlet, 116 U.S. 408, 410, 6 S.Ct. 426, 29 L.Ed. 679 (1886). Assuming, arguendo, that this case law

exception should apply to the one-year cap as well, the Court finds that Plaintiff's additional cause of action for bad faith breach does not transform his breach of policy case into a new suit. The Court further finds that the interests of judicial economy and prevention of interference in the state court action where substantial proceedings have occurred, interests which underpin the one-year cap, are of paramount importance in the instant case. Therefore, this Court finds that this case should be remanded to Tulsa County District Court.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Remand is hereby granted.

ORDERED this 5th day of June, 1991.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

STATE OF OKLAHOMA
DISTRICT COURT IN AND FOR TULSA COUNTY,
OKLAHOMA

ORDER

On this 19th day of August, 1992, the following matters in the designated cases came on for decisions, pursuant to the Rules of the District Court for Tulsa County. The Clerk of the Court is directed to notify counsel of record of the indicated decisions by mailing a copy of the ORDER to them and filing a copy of the ORDER in each case.

_____
DAVID L. PETERSON
DISTRICT JUDGE

CJ-89-4868 JOSEPH JABBOUR V FARMERS INSURANCE CO.

Defendant's motion to compel an appraisal and stay is granted. Notice mailed to: Bruce McKenna, Dale Ellis.

AFFIDAVIT OF MAILING

I hereby certify that I have this 19th day of Aug., 1992 mailed

a true and correct copy of the above decision(s) as ordered by the Court, and a true and correct copy was filed in each of the above foregoing cases.

DON E. AUSTIN, COURT CLERK

_____

Marianne Moffett
Deputy Court Clerk

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

JOSEPH JABBOUR,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 89-4868
	)	
FARMERS INSURANCE COMPANY, INC., d/b/a FARMERS INSURANCE GROUP,	)	
	)	
Defendant.	)	

ORDER

On this 17th day of August, 1994, the Motion for Order Confirming Appraisal Award of defendant Farmers Insurance Company, Inc., comes before this Court. This Court finds that said Motion should be denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that defendant's Motion for Order Confirming Appraisal Award is hereby denied.

David Peterson
JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM:

_____

FRANK CASEY,
Attorney for Plaintiff

_____

DALE ELLIS
Attorney for Defendant

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

JOSEPH JABBOUR,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. CJ-89-4868
	)	
FARMERS INSURANCE COMPANY, INC., d/b/a FARMERS INSURANCE GROUP,	)	
	)	
Defendant.	)	

ORDER

On this 28th day of September, 1994, the Motion to Reconsider Order Denying Motion to Confirm Award and Request for Hearing of defendant Farmers Insurance Company Inc., filed on August 18, 1994, comes on before this Court. The Court finds that said motion and request should be denied.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that defendant's Motion to Reconsider Order Denying Motion to Confirm Award and Request for Hearing are hereby denied.

DAVID PETERSON
JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM

_____

FRANK CASEY,
Attorney for Plaintiff

_____

DALE ELLIS
Attorney for Defendant

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

November 30, 1994

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDER:

84,516 - FARMERS INSURANCE COMPANY, INC. V. JOSEPH JABBOUR

Court notes the filing of a supplemental petition in error with the orders attached. Appellant is directed to show cause why this appeal should not be dismissed for lack of an appealable order. In response, appellant should address the following: 1) why the Federal Arbitration Act should apply when the Oklahoma Arbitration Act expressly exempts insurance contracts from its provisions, 15 O.S. 1991 § 802(A); 2) whether the Federal Arbitration Act applies in this case, see Hartford Lloyd's Insurance Company v. Teachworth, 88898 F.2d 1058 (5th Cir. 1990); and 3) if the Oklahoma and Federal Arbitration Acts don't apply, any other reason why the trial court's order would be appealable. Appellant's response shall be filed not later than December 14, 1994.

Robert E. Lavender
VICE CHIEF JUSTICE

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FARMERS INSURANCE COMPANY, INC.,	)	
Appellant,	)	
v.	)	No. 84-516
JOSEPH JABBOUR,	)	
Appellee.	)	

ORDER

Appellee's motion to dismiss is granted and this appeal is dismissed. The trial court's order, refusing to confirm an appraisal award in a case arising out of an insurance contract, is not an interlocutory prejudgment order appealable by right. Insurance contracts are specifically excluded from the Oklahoma Arbitration Act. See 15 O.S. 1991 § 802(A). Interlocutory orders appealable by right are limited to those expressly identified by an Oklahoma statute. Reams v. Tulsa Cable Television, Inc., 604 P.2d 373 (Okl. 1979).

Appellant's request that the original petition in error be recast

as an application to assume original jurisdiction and petition for writ of mandamus is denied.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 10TH DAY OF JANUARY, 1995.

Alma Wilson
CHIEF JUSTICE

WILSON, C.J., KAUGER, V.C.J., LAVENDER, SIMMS and OPALA, JJ. - Concur

U.S. Const., art. VI, cl. 2.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

15 U.S.C. § 1012 (1976). Regulation by State law; Federal law relating specifically to insurance; applicability of certain Federal laws after June 30, 1948

(a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation of taxation of such business.

(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: *Provided,* That after June 30, 1948, the Act

of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by State law.

Mar. 9, 1945, c. 20, § 2, 59 Stat. 34; July 25, 1947, c. 326, 61 Stat. 448.

9. U.S.C. § 2 (1970). Validity, irrevocability, and enforcement of agreements to arbitrate

A written provision in any maritime transaction or an contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contact or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract transaction, or refusal shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any

contract.

July 30, 1947, c.392, 61 Stat. 670.

9. U.S.C. § 3 (1970). Stay of proceedings where issue therein referable to arbitration

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

July 30, 1947, c. 3392, 61 Stat. 670.

9. U.S.C. § 9 (1970). Award of arbitrators; confirmation; jurisdiction; procedure

If the parties in their agreement have agreed that a judgment

of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified of an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

July 30, 1947, c.392, 61 Stat. 672.

9. U.S.C. § 10 (West Supp. 1995). Same; vacation; grounds; rehearing

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon application of any party to the arbitration-

(1) Where the award was procured by corruption, fraud, or undue means.

(2) Where there was evident partiality or corruption in the arbitrators, or either of them.

(3) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of nay other misbehavior by which the rights of any party have been prejudiced.

(4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award

upon the subject matter submitted was not made.

(5) Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a hearing by the arbitrators.

(b) The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

(As amended Nov. 15, 1990, Pub.L. 101-552, §5, 104 Stat. 2745; Aug. 26, 1992, Pub.L. 102-354, §5(b)(4), 106 Stat. 946.)

9.U.S.C. §16 (West Supp. 1995). Appeals

(a) An appeal may be taken from--

(1) an order--

(A) refusing a stay of any action under section 3 of this title,

(B) denying a petition under section 4 of this title to order arbitration to proceed,

(C) denying an application under section 206 of this title to compel arbitration,

(D) confirming or denying confirmation of an award or partial award, or

(E) modifying, correcting, or vacating an award;

(2) an interlocutory order granting, continuing, or modifying an injunction against an arbitration that is subject to this title; or

(3) a final decision with respect to an arbitration that is subject to this title.

(b) Except as otherwise provided in section 1292(b) of title 28, an appeal may not be taken from an interlocutory order--

(1) granting a stay of any action under section 3 of this title;

(2) directing arbitration to proceed under section 4 of this title;

(3) compelling arbitration under section 206 of this title; or

(4) refusing to enjoin an arbitration that is subject to this title.

(Added Pub.L. 100-702, Title X, § 1019(a), Nov. 19, 1977, 102 Stat. 4671, §15 renumbered Pub.L. 101-650, Title III, §325(a)(1), Dec. 1, 1990, Stat. 5120.)

Okla. Stat. tit. 12, § 952 (1988). Jurisdiction of Supreme Court

(a) The Supreme Court may reverse, vacate or modify judgments of the district court for errors appearing on the record, and in the reversal of such judgment may reverse, vacate or modify any intermediate order involving the merits of the action, or any portion thereof.

(b) The Supreme Court may reverse, vacate or modify any of the following orders of the district court, or a judge thereof:

1. A final order;

2. An order that discharges, vacates or modifies or refuses

to vacate or modify a provisional remedy which affects the substantial rights of a party; or grants, refuses, vacates, modifies or refuses to vacate or modify an injunction; grants or refuses a new trial; or vacates or refuses to vacate a final judgment;

3. Any other order, which affects a substantial part of the merits of the controversy when the trial judge certifies that an immediate appeal may materially advance the ultimate termination of the litigation; provided, however, that the Supreme Court, in its discretion, may refuse to hear the appeal. If the Supreme Court assumes jurisdiction of the appeal, it shall indicate in its order whether the action in the trial court shall be stayed or shall continue.

The failure of a party to appeal from an order that is appealable under either subdivision 2 or 3 of subsection (b) of this section shall not preclude him from asserting error int he order after the judgment or final order is rendered.

R.L.1910, § 5236; Laws, 1955, p. 135, § 1; Laws 1968, c.290, § 1, eff. Jan. 13, 1969.

Okla. Stat. tit. 12, § 953 (1988). Final Order Defined

An order affecting a substantial right in an action, when such order, in effect, determines the action and prevents a judgment, and an order affecting a substantial right, made in a special proceeding or upon a summary application in an action after judgment, is a final order, which may be vacated, modified or reversed, as provided in this article.

R.L.1910, c. 60, ar. 25, incorporated in this title.

Okla. Stat. tit. 12, § 993 (West Supp. 1995). Appeals from certain interlocutory orders

A. When an order:

1. Discharges, vacates, or modifies or refuses to discharge, vacate, or modify an attachment;

2. Denies a temporary injunction, grants a temporary injunction except where granted at an ex parte hearing, or discharges, vacates, or modifies or refuses to discharge, vacate or modify a temporary injunction;

3. Discharges, vacates, or modifies or refuses to discharge, vacate, or modify a provisional remedy which affects the substantial rights of a party;

4. Appoints a receiver except where the receiver was appointed at an ex parte hearing, refuses to appoint a receiver, or vacates or refuses to vacate the appointment of a receiver;

5. Directs the payment of money pendente lite except where granted at an ex parte hearing, refuses to direct the payment of money pendente lite, or vacates or refuses to vacate an order directing the payment of money pendente lite;

6. Certifies or refuses to certify an action to be maintained as a class action; or

7. Grants a new trial or opens or vacates a judgment or order, the party aggrieved thereby may appeal the order to the Supreme Court without awaiting the final determination in said cause, by filing the petition in error and the record on appeal with the Supreme Court within thirty (30) days after the order prepared in conformance with Section 10 of this act,[1] is filed with the court clerk. Where the order states the matter was taken under

advisement, the petition in error, if filed, must be filed within thirty (30) days from the date of mailing of a file-stamped copy of the order to the appealing party, as indicated on the Certificate of Mailing. The Supreme Court may extend the time for filing the record upon good cause shown.

B. If the order discharges or modifies an attachment or temporary injunction and it becomes operative, the undertaking given upon the allowance of an attachment or temporary injunction shall stay the enforcement of said order and remain in full force until final order of discharge shall take effect.

C. Where a receiver shall be or has been appointed, upon the appellant filing an appeal bond, with sufficient sureties, in such sum as may have been required of the receiver by the court or a judge thereof, conditioned for the due prosecution of the appeal and the payment of all costs or damages that may accrue to the state or any officer or person by reason thereof, the authority of the receiver shall be suspended until the final determination of the appeal, and if the receiver has taken possession of any property, real or personal, it shall be returned and surrendered to the

appellant upon the filing and approval of the bonds.

Laws 1970, c. 289, § 1, eff. July 1, 1970; Laws 1978, c. 245, § 8, eff. July 1, 1978; Laws 1984, c. 40, § 1, eff. Nov. 1, 1984; Laws 1990, c. 251, § 14, eff. Jan. 1, 1991; Laws 1991, c. 251, § 17, eff. June 1, 1991; Laws 1993, c. 351, § 22, eff. Oct. 1, 1993.

[1] Section 696.3 of this title.

Okla. Stat. tit. 12, § 1451 (1993). By and to whom writ issued--Function

The writ of mandamus may be issued by the Supreme Court or the district court, or any justice or judge thereof, during term, or at chambers, to any inferior tribunal, corporation, board or person, to compel the performance of any act which the law specially enjoins as a duty, resulting from an office, trust or station; but though it may require an inferior tribunal to exercise its judgment or proceed to the discharge of any of its functions, it cannot control judicial discretion.

R.L.1910, § 4907.

Okla. Stat. tit. 12, § 1452 (1993). Writ not issued where remedy at law--Information.

This writ may not be issued in any case where there is a plain and adequate remedy in the ordinary course of the law. It may be issued on the information of the party beneficially interested.

R.L.1910, § 4908.

Okla. Const. art. 7, § 4. Jurisdiction of Supreme Court--Writs

The appellate jurisdiction of the Supreme Court shall be coextensive with the State and shall extend to all cases at law in equity; except that the Court of Criminal Appeals shall have exclusive appellate jurisdiction in criminal cases until otherwise provided by statute and in the event there is any conflict as to jurisdiction, the Supreme Court shall determine which court has jurisdiction and such determination shall be final. The original jurisdiction of the Supreme Court shall extend to a general superintending control over all inferior courts and all Agencies,

Commissions and Boards created by law. The Supreme Court Court of Appeals, in criminal matters and all other appellate courts shall have power to issue, hear and determine writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition and such other remedial writs as may be provided by law and may exercise such other and further jurisdiction as may be conferred by statute. Each of the Justices or Judges shall have power to issue writs of habeas corpus to any part of the State upon petition by or on behalf of any person held in actual custody and make such writs returnable before himself, or before the Supreme Court, other Appellate Courts, or before any District Court, or judge thereof in the State. The appellate and the original jurisdiction of the Supreme Court and all other appellate courts shall be invoked in the manner provided by law.

Added by State Question No. 448, Legislative Referendum No. 164, adopted at election held July 11, 1967.

Okla. Const. art. 7, § 7. District Courts--Jurisdiction--Courts abolished--Transfer of jurisdiction, files, etc.

(a) The State shall be divided by the Legislature into judicial districts, each consisting of an entire county or of contiguous counties. There shall be one District Court for each judicial district, which shall have such number of District Judges, Associate District Judges and Special Judges as may be prescribed by statute. The District Court shall have unlimited original jurisdiction of all justiciable matters, except as otherwise provided in this Article, and such powers of review of administrative action as may be provided by statute. Existing electing districts for all who are or who become District Judges and Associate District Judges under the terms of this Article shall remain as they are constituted for the offices formerly held by such persons on the effective date of this Article, until changed by statute. The Legislature may at any time delegate authority to the Supreme Court to designate by court rule the division of the State into districts and the number of judges.

Okla. Stat. tit. 15, § 802 (1993). Application of act--Courts--Jurisdiction

A. This act shall apply to a written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties. Such agreements are valid, enforceable and irrevocable, except upon such grounds as exist at law or in equity for the revocation of any contract. This act shall not apply to collective bargaining agreements or contracts with reference to insurance except for those contracts between insurance companies.

B. The term "court" as used in this act means any court of competent jurisdiction of this state. The making of an agreement described in this section providing for arbitration in this state confers jurisdiction on the court to enforce the agreement under this act and to enter judgment on an award thereunder.

Laws 1978, c. 308, § 2, eff. Oct. 1, 1978.

IN THE SUPREME COURT OF THE STATE
OF OKLAHOMA

FARMERS INSURANCE COMPANY, INC.,	)	
Appellant,	)	
vs.	)	No. 84516
JOSEPH JABBOUR,	)	
Appellee.	)	

PETITION IN ERROR
(AND PRELIMINARY STATEMENT)
(INTERLOCUTORY ORDER)

. . .

E. ALL APPELLANTS MUST SHOW HOW THE APPEAL IS TIMELY BROUGHT

. . .

3. 9 U.S.C. § 16(a)(D) provides that appeals may be immediately brought from orders denying confirmation of arbitration awards. Petition in Error was delivered to the Supreme Court Clerk within thirty days of date order was mailed to Appellant by District Court Clerk.

. . .